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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 IN RE CALIFORNIA BAIL BOND
14 ANTITRUST LITIGATION

15
16 This Document Relates To:
17 ALL ACTIONS

Master File No. 3:19-CV-000717-JST

CLASS ACTION

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' JOINT MOTION TO
DISMISS**

Judge: Hon. Jon S. Tigar
Hearing Date: August 26, 2020
Courtroom: 2, 4th Floor
Time: 2:00 p.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Evidence 201 and the incorporation by reference doctrine, Plaintiffs hereby request that the Court take judicial notice of the following documents in support of Plaintiffs' Opposition to Defendants' Joint Motion to Dismiss, which is filed concurrently. The exhibit references correspond to the exhibits attached to the Declaration of Jallé Dafa filed herewith:

- Exhibit 1: Greg Padilla Bail Bonds' Web Page "How Bail Works" with Embedded Video
- Exhibit 2: AIA Holdings, Inc. Web Page
- Exhibit 3: American Bail Coalition's 2005 Form 990
- Exhibit 4: Golden State Bail Agents Association ("GSBAA") Resources Web Page
- Exhibit 5: Continental Heritage Insurance Company's 1999 CDI Rate Filing
- Exhibit 6: American Contractors Indemnity Company's 1999 CDI Rate Filing
- Exhibit 7: International Fidelity Insurance Company's 2017 CDI Rate Filing
- Exhibit 8: Continental Heritage Insurance Company's 2014 CDI Financial Condition Report
- Exhibit 9: 2015 Allegheny Financial Examination Report

1 **I. INTRODUCTION**

2 Plaintiffs respectfully request that this Court take judicial notice of nine documents,
3 including three web pages and six government records, attached as exhibits to the Declaration of
4 Jallé Dafa, submitted herewith. These are publically available documents the authenticity of
5 which cannot reasonably be disputed.

6 **II. LEGAL STANDARD**

7 In deciding a motion to dismiss, courts are generally limited to the pleadings. *See Lee v.*
8 *City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). There are two exceptions. First, a court
9 may consider judicially noticed facts—facts that are “generally known” or “capable of accurate
10 and ready determination by resort to sources whose accuracy cannot be reasonably questioned.”
11 *See United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (quoting Fed. R. Evid. 201(b)(1)-
12 (2)). When “the court is supplied with the necessary information” the court “must take judicial
13 notice if a party requests it.” Fed. R. Evid. 201(c)(2).

14 Second, a court may also consider documents under the doctrine of incorporation by
15 reference. “Unlike rule-established judicial notice, incorporation-by-reference is a judicially
16 created doctrine that treats certain documents as though they are part of the complaint itself.”
17 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). Incorporation by
18 reference is appropriate where “the plaintiff refers extensively to the document or the document
19 forms the basis of the plaintiff’s claim.” *Ritchie*, 342 F.3d at 908.

20 **III. ARGUMENT**

21 **A. Information on Defendant AIA’s Website (Exhibit 2), GSBAA’s Website**
22 **(Exhibit 4), and Third-Party Greg Padilla Bail Bonds’ Website (Exhibit 1)**

23 Exhibit 2 is a printout of a Defendant AIA Holdings’ (“AIA”) web page entitled “About
24 AIA.” Dafa Decl. ¶ 2. Exhibit 4 is a printout of Defendant Golden State Bail Agent’s
25 Association’s (“GSBAA”) “Resources” web page, which is discussed in the SCAC at Paragraph
26 149. Dafa Decl. ¶ 4.

27 Publically available web pages are judicially noticeable where, as here, “there can be no
28 reasonable dispute” as to their reliability. *See Rollins v. Dignity Health*, 338 F. Supp. 3d 1025,

1 1032 (N.D. Cal. 2018) (Tigar, J.); *Opperman v. Kong Techs., Inc.*, No. 13-CV-00453-JST, 2017
2 WL 3149295, at *4 (N.D. Cal. July 25, 2017) (Tigar, J.) (taking judicial notice where plaintiffs’
3 exhibits were “available to the public on [defendant’s] website, the website’s authenticity is not in
4 dispute, and the exhibits [were] capable of accurate and ready determination” (citation omitted)).
5 Printouts of web pages are not subject to reasonable dispute where the printout originates from a
6 website “which purports to be maintained by [Defendant] itself.” *Blue Lake Rancheria v. United*
7 *States*, No. 08-4206 SC, 2010 WL 144989, at *2 n.4 (N.D. Cal. Jan. 8, 2010), *rev’d and remanded*
8 *on other grounds*, 653 F.3d 1112 (9th Cir. 2011); *Savin v. City & Cty. of San Francisco*, No. 16-
9 CV-05627-JST, 2017 WL 2686546, at *5 n.3 (N.D. Cal. June 22, 2017) (Tigar, J.) (taking judicial
10 notice of the defendant’s own website which described its mission). Exhibit 2 and 4 are from two
11 Defendants’ own websites and are therefore judicially noticeable. Further, the Court may
12 consider Exhibit 4 for the separate reason that the webpage is discussed in the Second
13 Consolidated Amended Complaint (ECF No. 94 (“SCAC”) at ¶ 149) and is therefore incorporated
14 by reference. ECF No. 91, Order Granting in Part and Denying in Part Motions to Dismiss
15 (“MTD Order”) at 6; *Ritchie*, 342 F.3d at 908.

16 Exhibit 1 is a video appearing on Padilla Bail Bond’s “How Bail Works” website,
17 <https://www.padillabailbonds.com/how-bail-works-faq/>. Dafa Decl. ¶ 1. In the video, titled
18 “Greg Padilla Bail Bonds Sacramento – FAQ,” Topo Padilla states that “[t]he premium of 10% is
19 regulated by the California Department of Insurance. That rate cannot legally be
20 discounted.” Dafa Decl. ¶ 1 (quoting FAQ Video at 1:25, 1:49). While Padilla Bail Bonds and
21 Mr. Padilla are not Defendants, material from third-party websites may be appropriate for judicial
22 notice where the material is not subject to reasonable dispute. *Datel Holdings Ltd. v. Microsoft*
23 *Corp.*, 712 F. Supp. 2d 974, 985 (N.D. Cal. 2010) (taking judicial notice of web page “printouts . .
24 . from third parties”); *see also Optivus Tech., Inc. v. Ion Beam Applications S.A.*, No. CV 03-2052
25 SJO(VBKX), 2004 WL 5700631, at *18 n.15 (C.D. Cal. Aug. 31, 2004) (taking judicial notice of
26 content embedded in third-party websites). Mr. Padilla is a founder and board member of
27 Defendant GSBA, Padilla Bail Bonds’ is referenced several times throughout the SCAC (¶¶
28 146, 214, 220), and the video appears on Padilla Bail Bonds’ own website, which is owned by

1 Mr. Padilla. In addition, Padilla Bail Bonds is one of Defendant Lexington National's bail agents.
2 SCAC ¶ 214. Plaintiffs submit the video not for the truth of Mr. Padilla's statements (indeed,
3 Plaintiffs dispute them), but for the indisputable fact that Mr. Padilla himself makes the
4 statements on his own website. Just as an internet article can be judicially noticed to "indicate
5 what was in the public realm at the time," Plaintiffs request the Court take judicial notice of the
6 fact of the existence of the video in Exhibit 1 and Mr. Padilla's statements made therein. *Von*
7 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (citation
8 omitted).

9 **B. Administrative Reports and Records Filed with State Insurance Agencies**
10 **(Exhibits 5, 6, 7, 8, and 9)**

11 Exhibits 5 through 7 are CDI rate filings for Continental Heritage Insurance Company,
12 American Contractors Indemnity Company, and International Fidelity Insurance Company,
13 respectively.¹ Exhibit 8 is Continental Heritage Insurance Company's 2014 Report entitled
14 "Management's Discussion & Analysis of Financial Condition and Results of Operation" filed
15 with the CDI. The rate filings and report are publically available on the CDI website.

16 As the Court previously recognized, the CDI filings are the proper subject of judicial
17 notice. *See* MTD Order at 5-6 (granting judicial notice of administrative records on the CDI
18 website). Reports and records for state insurance agencies are matters of public record, whether
19 they are made available on paper or online. *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d
20 380, 385 (9th Cir. 1953) ("We may take judicial notice of records and reports of administrative
21 bodies."); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 999 (9th Cir. 2010) (taking judicial
22 notice of information compiled by government entities and made publicly available on their
23 websites); *Mike Rose's Auto Body, Inc. v. Applied Underwriters Captive Risk Assurance Co.,*
24 *Inc.*, No. 16-cv-01864-EMC, 2016 WL 5407898, at *2 (N.D. Cal. Sept. 28, 2016) (taking judicial
25 notice of records by the California Insurance Commissioner); *Faragi v. Provident Life & Acc.*
26 *Inc. Co.*, 161 F. App'x 649, 650 (9th Cir. 2005) (same). Further, Plaintiffs' conspiracy claims

27 ¹ Given the length of the filings, Plaintiffs have included here only those portions of the CDI
28 filings relied on in their opposition brief. Plaintiffs will file the entire document should the Court
request it.

1 rely extensively on the contents of the Surety Defendants' rate filings and financial disclosures
2 available on the CDI website. Because Plaintiffs' claims fundamentally depend on the contents
3 of these filings, they are incorporated by reference. *See Ritchie*, 342 F.3d at 908.

4 Exhibit 9 is the Report on Examination as to the Condition of the Allegheny Casualty
5 Company as of December 31, 2015. Robert A. Pietras, Examiner-In-Charge and Certified
6 Financial Reviewer from the New Jersey Department of Banking and Insurance ("NJDBI")
7 prepared the report for the NJDBI. Jafa Decl. ¶ 9. The report is subject to judicial notice because
8 it reflects a report by a state agency, the NJDBI, appearing on the state agency's website. *See*
9 *Wilson v. Frito-Lay N. Am., Inc.*, 260 F. Supp. 3d 1202, 1206-07 (N.D. Cal. 2017) (Tigar, J.)
10 ("Public records and information on government agency websites are properly subject to judicial
11 notice.").

12 **C. Defendant ABC's 990 Form (Exhibit 3)**

13 Exhibit 3 is Defendant ABC's 2005 Form 990, filed with the Internal Revenue Service.
14 Dafa Decl. ¶ 3. Exhibit 3 reflects that Defendant Carmichael was listed as chairman of ABC in
15 2005.

16 Filings with the IRS, including Form 990s, are appropriate for judicial notice. *See Hughes*
17 *v. United States*, 953 F.2d 531, 539-40 (9th Cir. 1992) (tax forms are a matter of public record);
18 *Urena v. Cent. Cal. Almond Growers Assn.*, No.18-cv-00517 NONE-EPG, 2020 WL 3483280, at
19 *13 (E.D. Cal. June 26, 2020) (taking judicial notice of proposed *cy pres* recipient's Form 990);
20 *Africare, Inc. v. Xerox Complete Document Sols. Md., LLC*, 436 F. Supp. 3d 17, 45 n.21 (D.D.C.
21 2020), *appeal dismissed sub nom. De Lage Landen Fin. Servs., Inc., Appellee v. Africare, Inc.,*
22 *Appellant*, No. 20-5038-RMC, 2020 WL 3635115 (D.C. Cir. June 30, 2020) (taking judicial
23 notice of defendant's Form 990).

24 **IV. CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully request that the Court take judicial notice
26 of Exhibits 1-9 of the Dafa Declaration, in support of Plaintiffs' Opposition to Defendants' Joint
27 Motion to Dismiss.
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1 Dated: July 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2020, I caused the foregoing to be electronically filed and served with the Clerk of the Court using the CM/ECF system to all parties of record.

/s/ Dean M. Harvey
Dean M. Harvey
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP